

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1906.

No. 1643.

JOHN R. GUERIN, APPELLANT,

vs.

HENRY B. F. MACFARLAND, HENRY L. WEST, AND
JOHN BIDDLE, AS COMMISSIONERS OF THE DIS-
TRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1643.

JOHN R. GUERIN, Appellant,
vs.
HENRY B. F. MACFARLAND ET AL., &c.

a Supreme Court of the District of Columbia.

Equity. No. 25682.

HENRY B. F. MACFARLAND, HENRY L. WEST, and JOHN BIDDLE, as
Commissioners of the District of Columbia, Complainants,
vs.
JOHN R. GUERIN, Defendant.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Bill of Complaint.*

Filed September 11, 1905.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 25682.

HENRY B. F. MACFARLAND, HENRY L. WEST, and JOHN BIDDLE, as
Commissioners of the District of Columbia, Complainants,
vs.
JOHN R. GUERIN, Defendant.

To the Supreme Court of the District of Columbia, holding a Special
Term in Equity:

The Bill of the above named Complainants respectfully shows to
the Court:

1. That the Complainants are the duly constituted Commissioners of the District of Columbia, and, as such, and for and in be-
1—1643A

half of the District of Columbia, a municipal body corporate, created by Act of Congress, they bring this suit against the defendant, John R. Guerin, to cause the removal of the obstruction hereinafter mentioned from the public space and parking hereinafter described.

2. That the said defendant, as owner, on or about the 15th day of March, A. D. 1905, made application to the Inspector of Buildings of said District of Columbia for permit to make repairs on that frame dwelling numbered 412 East Capitol Street, northeast, in the City of Washington, District of Columbia, situated on part of lot numbered two (2), in Square numbered Eight Hundred and Sixteen (816), and fronting about twelve feet and nine inches on the north line of said East Capitol street.

Said application stated that said repairs consisted in replacing weather-boarding, window frames and sash, and wooden cornice.

That thereupon, on the 15th day of March, 1905, the said Inspector of Buildings issued a permit to said defendant giving him "permission to repair weather-boarding on the south side of existing frame dwelling, also repair window frames and sash, and new wood cornice. No enlargement—No increase in projection of cornice," in accordance with said application; and said permit further stated that it was "subject to the provisions of the Building Regulations of the District" and that "Building material not allowed on public space."

3. That said defendant, contrary to the Act of Congress approved March 3, 1891, in such case made and provided, which states:

"That the action of the Commissioners of the District of Columbia in heretofore granting permits for the extension of any building or buildings, or any part or parts thereof, in the city of Washington, in the District of Columbia, beyond the building line, and upon the streets and avenues of said city, is hereby ratified, without prejudice, however, to the legal rights of the Government in the event of destruction by fire, or otherwise, of any such structure. And hereafter no such permit shall be granted except upon special application and with the concurrence of all of said Commissioners and the approval of the Secretary of War" and without permit so to do, and without the concurrence of said Commissioners and the approval of the Secretary of War, proceeded to erect on the said front of said dwelling, beyond the building line of said East Capitol street, and on the public space and parking between the said building line and the sidewalk of said East Capitol street, a frame and glass show-window, which projected three feet (extreme measurement) south of the established building line of said East Capitol street by the width of seven feet and ten inches (extreme measurement), as will appear by reference to a plat thereof, marked Exhibit "A," and photographs thereof, marked Exhibits "B" and "C," respectively, filed herewith and prayed to be considered as part hereof.

4. That the Inspector of Buildings, through his Assistant, Albert S. J. Atkinson, inspected said premises on or about the 27th day of March, 1905, and found that said show window had then been erected; and said Assistant Inspector then and there orally notified

the defendant that said show-window must be removed, unless a proper application be made at once, duly approved and permit granted as required by law; that thereafter on or about the 6th day of April, 1905, defendant was again orally notified by said Assistant Inspector to remove said show window from said public space, and on said day the Inspector of Buildings for the District of Columbia prepared the following notice, viz:—

WASHINGTON, D. C., *April 6, 1905.*

Mr. J. R. Guerin, #412 East Capitol St., Washington, D. C.

4 SIR: Examination having been made by an Inspector from this office of premises #412 East Capitol St. N. E., it was found that you have erected a show window 3' 0" x 8' 0" without first obtaining a permit from this office, which is a violation of Section 19 of the Building Regulations of the District of Columbia.

You are therefore notified to have this show window removed within ten (10) days from date of this notice.

Very respectfully,
(Signed)

S. ASHFORD,
Inspector of Buildings.

That said notice was on the 8th day of April, 1905, delivered to the said defendant.

And the Complainants further show that notwithstanding that said show-window was erected without authority, and notwithstanding said notices of removal, the defendant ever since the erection thereof as aforesaid has maintained, and still maintains the same unlawfully on the public parking space on said street, as aforesaid.

5. That Complainants are the governing officers of the District of Columbia and are invested with the control and regulation of the streets of the City of Washington, having the care, charge of, and the exclusive jurisdiction of all streets, avenues and public roads in the District of Columbia, except such as belong to and are under the care of the United States; and they have the jurisdiction and control of the street-parking in the streets, and avenues of the District of Columbia by virtue of the authority of Congress.

6. Complainants aver that the defendant had no authority
5 under said permit given him, or otherwise, to place said projection, or any part thereof, beyond said building line, and the said projection, and every part thereof, is an illegal obstruction of public parking and an invasion of the said rights and duty of Complainants, and, being an encroachment upon public space, is a public nuisance and illegal and may render the District of Columbia liable to persons and property injured thereby if complainants fail to cause the same to be removed.

These Complainants, therefore, pray:

First. That due process may be served upon the defendant, John R. Guerin, requiring him to appear and answer the exigency of this Bill, but not under oath, an answer under oath being hereby expressly waived.

Second. That the defendant be enjoined from further using or maintaining said projection, or any part thereof, beyond the building line of said East Capitol street, in the District of Columbia, and be required to remove the same therefrom.

Third. And for such other and further relief as the nature of the case may require.

The defendant to this Bill is John R. Guerin.

HENRY B. F. MACFARLAND,
HENRY L. WEST,
JOHN BIDDLE,
Commissioners of the District of Columbia.

A. B. DUVALL,
E. H. THOMAS,
Solicitors for Complainants.

6 DISTRICT OF COLUMBIA, ss:

We, Henry B. F. Macfarland, Henry L. West, and John Biddle, being first duly sworn, upon our oaths say, that we are the Commissioners of the District of Columbia; that we have read the foregoing Bill by us subscribed and know the contents thereof; that the facts stated therein upon our personal knowledge are true, and those stated upon information and belief we believe to be true.

HENRY L. WEST.
JOHN BIDDLE.

Subscribed and sworn to before me this 8th day of September, 1905.

[SEAL.]

WILLIAM TINDALL,
Notary Public.

Rule to Show Cause.

Filed September 11, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 25682, Doc. 57.

HENRY B. F. MACFARLAND, HENRY L. WEST, and JOHN BIDDLE, as
Commissioners of the District of Columbia, Complainants,
vs.

JOHN R. GUERIN, Defendant.

7 This cause coming on to be heard on application of the Complainants for a rule to show cause why an injunction should not issue against the defendant as prayed in the Bill, it is by the Court this 11th day of September, 1905, Ordered, that

the defendant John R. Guerin, show cause, if any he has, why he should not be enjoined from further using or maintaining the projection mentioned in said Bill or any part thereof, beyond the building line of East Capitol street, and be required to remove the same, at a hearing which is hereby fixed for the 18th day of September, 1905, at ten o'clock A. M.; provided a copy of this order be served on the defendant two days before the said last named day.

By the Court:

ASHLEY M. GOULD, *Justice.*

Demurrer.

Filed October 27, 1905.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 25682.

HENRY B. F. MACFARLAND ET AL., Complainants,

v.

JOHN R. GUERIN, Defendant.

8 The defendant, for response to the rule to show cause passed herein, refers to the demurrer herewith filed and upon which he relies as showing sufficient cause against the injunction prayed by the bill.

JNO. R. GUERIN.

LAMBERT & BAKER,
JNO. RIDOUT,
Solicitors for Defendant.

DISTRICT OF COLUMBIA, ss:

John R. Guerin, being first duly sworn, on oath deposes and says that he has read over the foregoing answer by him subscribed and knows the contents thereof; that the matters and facts therein stated upon his personal knowledge are true, and those stated upon information and belief he believes to be true.

JNO. R. GUERIN.

Subscribed and sworn to before me this 28th day of September, A. D. 1905.

[SEAL.]

RUTLEDGE WILLSON,
Notary Public, D. C.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 25682.

HENRY B. F. MACFARLAND ET AL., Complainants,

v.

JOHN R. GUERIN, Defendant.

The defendant by protestation, not admitting the averments of the bill, doth demur thereto, and for grounds of said demurrer says:

9 1. That the complainants, as appears by the said bill, have no standing in court in contemplation of law, to file or maintain said bill.

2. That the complainants have not, in and by their said bill, made or stated any such case as entitles them to the relief thereby sought.

And the defendant prays the judgment of the court whether he ought further answer the said bill.

LAMBERT & BAKER,
Solicitors for Defendant.

I, John R. Guerin, do solemnly swear that the foregoing demurrer is not interposed for delay.

JNO. R. GUERIN.

Subscribed and sworn to before me this 28th day of September,
A. D. 1905.

[SEAL.]

RUTLEDGE WILLSON,
Notary Public, D. C.

I hereby certify that I am the solicitor for the defendant, and that the foregoing demurrer is, in my opinion well founded in point of law.

WILTON J. LAMBERT,
Solicitor for Defendant.

10

Order.

Filed October 19, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 25682, Doc. 57.

HENRY B. F. MACFARLAND ET AL.

v.

JOHN R. GUERIN.

This cause coming on to be heard on the Rule to show cause why an injunction should not issue as prayed in the Bill filed, and on the

demurrer of the defendant considered as an answer to said rule, the proceedings and Bill were read, and after argument by counsel, and consideration by the Court, it is by the Court this 19th day of October, 1905, ordered, that said rule to show cause be and the same is hereby made absolute, and that the defendant be and he hereby is enjoined pending this cause from further using or maintaining the said projection, or any part thereof, mentioned in said Bill, beyond the building line of said East Capitol Street, upon compliance with Equity rule No. 42.

WENDELL P. STAFFORD, *Justice*.

From this order the defendant in open Court appeals to the Court of Appeals. The penalty of the bond on such appeal to operate as a supersedeas is hereby fixed at One hundred dollars, and the operation of the injunction contained in said order shall, upon the execution and approval of said bond, be suspended until the final disposition of said appeal.

WENDELL P. STAFFORD, *Justice*.

11

Memorandum.

October 23, 1905—Appeal bond filed.

Designation for Record.

Filed November 22, 1905.

In the Supreme Court of the District of Columbia.

In Equity. No. 25682.

HENRY B. F. MACFARLAND ET AL.

vs.

JOHN R. GUERIN.

The Clerk will please prepare transcript of record herein including therein:

Bill, no exhibits.

Rule to show cause.

Demurrer.

Order thereon.

Appeal in open court.

Appeal bond given.

LAMBERT & BAKER,
JOHN RIDOUT,
Solicitors for Defendant.

THURSDAY, *December 7, 1905.*

The Court resumes its Session pursuant to adjournment, Mr. Justice Stafford, presiding.

No. 25682. Equity, Docket 57.

HENRY B. F. MACFARLAND ET AL.

vs.

JOHN R. GUERIN.

It appearing to the Court that the Clerk will be unable to complete the record on appeal herein at an earlier date, it is this 7th. day of December, 1905 ordered that the time to file the transcript on such appeal be and it is hereby extended to January 15th, 1906.

WENDELL P. STAFFORD, *Justice.*

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 12, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript in cause No. 25682 in equity, wherein Henry B. F. Macfarland *et al.*, are Complainants, and John R. Guerin is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 28th day of November, A. D., 1905.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 1643. John R. Guerin, appellant, *vs.* Henry B. F. Macfarland *et al.*, &c. Court of Appeals, District of Columbia. Filed Jan. 15, 1906. Henry W. Hodges, clerk.

